

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLOYD R. HUNTER and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, San Diego, CA

*Docket No. 99-359; Submitted on the Record;
Issued August 29, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

This case has previously been before the Board.¹ In its February 4, 1998 decision, the Board found that appellant had not established entitlement to a schedule award greater than the five percent impairment granted for both upper extremities on December 19, 1995. The facts and history of the case as set forth in the Board's February 4, 1998 decision are incorporated herein.²

By letter dated September 3, 1998, appellant requested reconsideration before the Office. Appellant indicated that he sought review of both the orthopedic and stress aspects of his claim. Appellant submitted the July 29, 1997 report of Dr. Renee Levten, a Board-certified psychiatrist, travel vouchers and enclosed a copy of the Office's May 9, 1997 decision denying his emotional condition claim.

¹ Docket No. 96-820 (issued February 4, 1998).

² Appellant sustained an injury on November 17, 1993, accepted for cervical and thoracic strain with herniated discs at C4-6. He underwent a cervical discectomy and fusion on August 26, 1994 and subsequently returned to light duty on December 19, 1994. The record indicates that on September 3, 1996, while the appeal in 96-820 was pending before the Board, appellant filed a claim for an emotional condition. This claim was denied by the Office in a May 9, 1997 decision. The Board noted that appellant did not appeal the denial of his emotional condition claim.

By decision dated October 6, 1998, the Office denied reconsideration of its December 19, 1995 schedule award on the grounds that the evidence submitted was irrelevant and immaterial to warrant review.³

The Board finds that the Office properly denied reopening appellant's schedule award claim for further review.

To require the Office to reopen a case for merit reconsideration under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's implementing regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁵

In his request for reconsideration, appellant indicated that he was seeking review of the Office's schedule award determination and his emotional condition. With respect to the schedule award determination, appellant did not demonstrate that the Office erroneously applied or interpreted a point of law or advance a point of law or fact not previously considered by the Office. Appellant submitted medical evidence pertaining to documents related to his emotional condition claim. These materials, however, are not relevant or pertinent with regard to the determination of the extent of permanent impairment granted under the December 19, 1995 schedule award. Appellant did not submit any medical evidence which addressed the issue of the percentage of impairment to his upper extremities due to the accepted employment injury. Therefore, the evidence submitted does not constitute a basis for reopening the schedule award claim.⁶

³ The Board notes that the October 6, 1998 memorandum of the claims examiner erroneously states that the Office was denying review of the Board's February 4, 1998 decision. It is well established that Office procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original Office decision and accompanies any subsequent merit review, including a merit decision by the Board; *see Larry J. Lilton*, 44 ECAB 243 (1992). The Office was, in fact, denying further merit review of the December 19, 1995 schedule award.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.138(b).

⁶ *See Michael C. Norman*, 42 ECAB 768, 779 (1991).

The October 6, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁷

Dated, Washington, D.C.
August 29, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Upon return of the case record, the Office should proceed with a determination on appellant's request for reconsideration of the May 9, 1997 denial of his emotional condition claim. This aspect of the claim was not adjudicated in the Office's October 6, 1998 decision such that it is not before the Board in the present appeal; *see* 20 C.F.R. § 501.2(c).